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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

15 EDIE GOLIKOV, individually and on  
behalf of all others similarly situated,  
16  
17 Plaintiff,

18 v.

19 WALMART INC.,  
20  
21 Defendant.

Case No. 2:24-CV-08211-RGK-MAR

Assigned to Honorable R. Gary  
Klausner

**DEFENDANT WALMART INC.'S  
NOTICE OF MOTION AND  
MOTION TO CLARIFY, OR TO  
DECERTIFY CLASSES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: July 28, 2025  
Time: 9:00 a.m.  
Ctrm.: 850

*[Declaration Jacob Harper and  
Proposed Order filed concurrently]*

Action Filed: September 24, 2024

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1 **TO THE COURT, PLAINTIFF, AND HER ATTORNEYS OF RECORD:**

2       **PLEASE TAKE NOTICE** that on July 28, 2025, at 9:00 a.m., or as soon  
3 thereafter as the matter may be heard before the Honorable R. Gary Klausner of the  
4 above-titled Court, located at 255 East Temple Street, Los Angeles, CA 90012,  
5 Courtroom 850, 8th Floor, defendant Walmart Inc. (Walmart) will and hereby does  
6 move this Court for an order (1) clarifying its June 10, 2025 Order Re: Motion to  
7 Compel Arbitration and Stay Proceedings (Dkt. 81) (Order), pursuant to Federal  
8 Rule of Civil Procedure (Rule) 60(a); or (2) decertifying the previously certified  
9 classes, pursuant to Rule 23(c).

10           Walmart requests clarification to confirm that the previously certified classes  
11 were decertified pursuant to the Order given that the Court ordered the only named  
12 plaintiff and class representative in this action to individually arbitrate her claims  
13 based on the parties' arbitration clause and class action waiver. The Order also  
14 denied the parties' joint stipulation to stay class notice as moot and removed all  
15 pending dates and hearings from the calendar.

16           In the alternative, if the Court did not intend for the Order to decide the status  
17 of the classes, Walmart hereby moves to decertify the classes based on the new  
18 Order, which negates the various requirements of Federal Rule of Civil Procedure  
19 23 that Ms. Golikov has a continuing burden to show remain satisfied even after an  
20 initial certification order.

21           Absent dismissal, clarification, or decertification, the headless classes will  
22 remain in limbo. An order now will also moot Walmart's pending Rule 23(f)  
23 petition to the Ninth Circuit regarding its substantive challenges to class  
24 certification.

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1        This Motion is based upon this Notice of Motion, the attached Memorandum  
2 of Points and Authorities, the concurrently-filed Declaration of Jacob Harper and  
3 exhibits thereto, and any other evidence or argument which the Court may consider.

4 This Motion is made following the conference of counsel pursuant to L.R. 7-3  
5 which took place on June 17 and 20, 2025. Harper Decl. ¶ 6.

7 | DATED: June 30, 2025

## DAVIS WRIGHT TREMAINE LLP

By: /s/ Jacob M. Harper  
Jacob M. Harper

*Attorneys for Defendant  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

On June 10, 2025, the Court granted defendant Walmart Inc. (Walmart)'s Motion to Compel Arbitration because plaintiff Edie Golikov purchased the avocado oil product at issue from Walmart.com, not in a brick-and-mortar "store" as she and her attorneys previously misrepresented. As the Court ruled, this means Walmart.com's Terms of Use, including both an individual arbitration agreement and a class action waiver, bind Ms. Golikov. *See* Dkt. 81 (Order) at 1-2.

Ms. Golikov's days as a class representative are over.

Those of the classes are numbered.

With the sole named plaintiff and class representative required to arbitrate her claims individually and subject to a class action waiver, the certified classes as a whole lack any viable class representative. The class action aspect of this litigation has effectively disintegrated, an outcome recognized by numerous other courts in similar situations. *E.g., Avilez v. Pinkerton Gov’t Servs., Inc.*, 596 F. App’x 579, 579 (9th Cir. 2015) (vacating class certification that included class members subject to class action waiver and finding class representative inadequate and atypical); *Parrish v. Gordon Lane Healthcare, LLC*, 2024 WL 4875326, at \*1 (C.D. Cal. Sept. 9, 2024) (court “could not certify a class that included members who both had and had not waived their class action rights by signing an arbitration agreement”); *Estrella v. Freedom Fin. Network, LLC*, 2012 WL 214856, at \*5 (N.D. Cal. Jan. 24, 2012) (decertification required when all class representatives agreed to arbitrate). Indeed, the Court’s Order implied as much when it held “moot” the then-pending stipulation to delay class notice, and vacated all remaining deadlines in this class action. Order at 5.

Had Ms. Golikov’s counsel simply disclosed the possible arbitration issue in a complaint with more candor (they knew about the issue before the case was filed), these classes would never have been certified, the Court and parties would not sit in

1 this unusual position, and this case may never have been filed. As it stands,  
2 however, this action remains in procedural limbo, with a class waiver and arbitration  
3 agreement disqualifying the sole class representative and tainting the certified  
4 classes. The Court should take action to remedy the situation.

5 Walmart respectfully moves the Court for one of two orders: (1) clarification  
6 that the Order dissolved the previously certified classes; or (2) formal decertification  
7 of the classes in this action. Any such order now would also moot Walmart's Rule  
8 23(f) petition to the Ninth Circuit regarding its substantive challenges to class  
9 certification, which still remains pending given the still certified classes.

10 **II. SUMMARY OF RELIEF REQUESTED**

11 ***Request 1: Clarification.*** First, Walmart requests that the Court clarify the  
12 necessary implication of the Order: that the previously certified classes are no  
13 longer viable based on the new factual revelations, and the Order therefore *sub  
14 silentio* dissolved the classes. The Court is empowered to clarify orders to reflect  
15 their implications under Federal Rule of Civil Procedure 60(a).<sup>1</sup>

16 ***Request 2: In the Alternative, Decertification.*** Second, in the alternative, if  
17 the Court did not intend implicitly to decide the status of the classes, Walmart  
18 hereby moves to decertify the classes based on the new Order, which negates the  
19 various Rule 23 requirements Ms. Golikov must prove remain satisfied even after  
20 certification:

21 • *Typicality and Adequacy of Ms. Golikov:* Ms. Golikov's agreement to  
22 arbitrate individually and waive her right to participate in a class action negates the  
23 prior finding that her claims are "typical of the claims or defenses of the class," and

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24 <sup>1</sup> The Order's findings regarding Ms. Golikov's late-disclosed arbitration  
25 agreement and class waiver also suggest dismissal in whole may be appropriate for  
26 lack of jurisdiction. *See, e.g., Archer v. Carnival Corp.*, 2021 WL 4798695 at \*4  
27 (C.D. Cal. May 14, 2021) (Klausner, J.) ("because Plaintiff[] signed valid and  
28 enforceable class action waivers, CAFA was not and could never be a proper basis  
for jurisdiction"); *accord Leuenhagen v. Carnival Corp.*, 2021 WL 12311039, at \*2  
(C.D. Cal. Oct. 27, 2021) (Klausner, J.).

1 precludes typicality and adequacy under Rule 23(a)(3) and 23(a)(4). This alone  
2 warrants decertification.

3         •     *Inadequacy of Class Counsel:* The Court, the parties, and the classes  
4 are in the current position because of class counsel’s confusing and misleading  
5 pleadings in which they obscured the arbitration issues through their too-cute-by-  
6 half definition of “store.” Class counsel knew or should have known about the  
7 online purchase issue before this litigation began, but disclosed it only after  
8 certification. The apparent motivation derives from class counsel’s desire to litigate  
9 (and try to obtain substantial attorneys’ fees in a class action context) rather than  
10 arbitrate individually. Class counsel cannot meet their duty of undivided loyalty to  
11 Ms. Golikov and any arbitration-bound class members when their financial interests  
12 militate in favor of class litigation (and thus favor the interests of class members  
13 who did not waive class adjudication). Class counsel’s conduct and potential  
14 conflicts mean that they cannot “fairly and adequately protect the interests” of all  
15 class members in violation of Rule 23(a)(4).

16         •     *Numerosity:* Given the existence of an arbitration agreement that  
17 applies to an unknown number of absent class members, Ms. Golikov and the class  
18 no longer satisfy even the low burden of showing the “class is so numerous that  
19 joinder of all members is impracticable,” violating Rule 23(a)(1).

20         •     *Commonality/Predominance:* Neither class can establish the requisite  
21 commonality and predominance requirements. Any purported class proceeding will  
22 require individualized analyses of which class members may be subject to the  
23 arbitration agreement and class action waiver in Walmart.com’s Terms of Use, and  
24 this kind of highly individualized analysis will “predominate over any questions  
25 affecting only individual members,” as required to maintain any Rule 23(b) class.

26         •     *Superiority:* The class action mechanism is not a superior method of  
27 adjudication of a Rule 23(b) classes given the practical difficulties of sorting out  
28 every purported class members’ ability to litigate.

1       *Substitution of a new plaintiff will not save the claims.* Ms. Golikov's  
2 Counsel has suggested that a substitute plaintiff may be added to this case. Walmart  
3 disputes she could even do so at this stage. But even if she could, many of the Rule  
4 23 deficiencies raised by the Order—class counsel conflicts and inadequacy,  
5 numerosity, predominance, superiority—are not saved by a new substitute plaintiff.

6       Walmart respectfully requests the Court (1) clarify that the Order decertified  
7 the classes, or (2) decertify them now.

8 **III. FACTUAL BACKGROUND**

9       **A. Ms. Golikov Sues Walmart Based on an In-Store Purchase.**

10      Ms. Golikov filed this lawsuit on September 24, 2024. Dkt. 1 (Compl.). In  
11 both her Class Action Complaint and First Amended Class Action Complaint  
12 (FAC), she alleges she purchased Walmart's Great Value Avocado Oil on  
13 November 14, 2021, "from a Walmart store." Compl. ¶ 26; Dkt. 31 (FAC) at 8 ¶ 26.  
14 Ms. Golikov claims the oil is mislabeled because other oils allegedly adulterate it.

15       **B. The Court Certifies Two Related Classes.**

16      On February 27, 2025, the Court granted Ms. Golikov's Motion for Class  
17 Certification. Dkt. 62. This Court certified: (a) a Rule 23(b)(2) class seeking  
18 potential injunctive relief regarding the product label, and (b) a Rule 23(b)(3) class  
19 seeking potential damages. *Id.* Walmart filed a Rule 23(f) petition seeking leave to  
20 appeal the certification order on March 13, 2025. No. 25-1685 (9th Cir.). The  
21 petition remains pending.

22       **C. Walmart Learns Ms. Golikov Purchased the Product Online.**

23      On March 18, 2025, Walmart served interrogatories inquiring into  
24 Ms. Golikov's purchase of the oil. Harper Decl. ¶ 2 & Ex. A. In responses served  
25 on April 17, 2025, Ms. Golikov revealed for the first time that she made her  
26 purchase on Walmart's website. *See* Harper Decl. ¶ 3 & Ex. B. Ms. Golikov  
27 revealed she used a Walmart.com "online account on November 14, 2021 to  
28 purchase [the oil]." *Id.* Ex. B at 16. This disclosure contradicted her prior

1 allegations that she purchased the oil “from a Walmart store” on November 14,  
2 2021. Compl. ¶ 26; FAC ¶ 26. Class counsel later produced in discovery an invoice  
3 printed on September 19, 2024—days before this action was filed on September 24,  
4 2024—showing the sole pleaded purchase of avocado oil was made online on  
5 Walmart.com. *See* Harper Decl. ¶ 5 & Ex. D.

6 **D. Ms. Golikov and Others May Be Bound by Walmart’s Terms.**

7 Based on the information provided in her interrogatory responses, Walmart  
8 confirmed Ms. Golikov repeatedly used the Walmart.com website for the purchase  
9 of Great Value Avocado Oil—not from a Walmart store as claimed in her  
10 complaints. *See* Dkt. 66-7 (Sahay Decl.) ¶ 3. Ms. Golikov made 11 online  
11 purchases of Great Value Avocado Oil, among at least 53 online purchases overall  
12 since March 27, 2020—for each of which Ms. Golikov separately agreed to  
13 Walmart.com’s Terms of Use. *Id.* ¶¶ 4–11; Dkt. 66-8 (Krsulic Decl.) ¶ 3 & Dkt. 66-  
14 9 (Ex. A) at 1.

15 As explained in the declarations submitted in support of Walmart’s motion to  
16 compel arbitration, Walmart.com’s Terms of Use require individual arbitration of all  
17 legally cognizable disputes. *See* Krsulic Decl. ¶ 3 & Ex. A (individual arbitration  
18 provision and class action waiver); *see also id.* ¶¶ 4–5, Dkt. 66-10 (Ex. B), Dkt. 66-  
19 11 (Ex. C) (versions from 2021 and present). Walmart.com customers agree to the  
20 Terms of Use when they purchase a product on Walmart’s website. For instance,  
21 customers may assent by selecting a blue “Place Order” button during the checkout  
22 process. Sahay Decl. ¶¶ 4–11. Adjacent to the “Place Order” button, the customer  
23 is presented with the following notice: “By placing this order, you agree to our  
24 Privacy Policy and Terms of Use,” and the underlined terms are hyperlinks to the  
25 full agreements. *Id.* ¶¶ 5–6, 9–10.

26 Walmart customers may also agree to various other arbitration agreements in  
27 connection with other Walmart programs. Krsulic Decl. ¶¶ 3–5 & Ex A at 13; Ex. B  
28 at 13, 39; Ex. C. at 12. For instance, Walmart offers a Walmart Pay feature within

1 its mobile app, which allows customers to make purchases at physical Walmart  
2 stores, whether after buying them on the app remotely or in-store while shopping in  
3 lieu of cash or a credit card. *Id.* Like with Walmart.com purchases, the customer is  
4 required to agree to Walmart's Terms of Use when using Walmart Pay. *Id.*

5 **E. Walmart Moves to Enforce the Terms of Use.**

6 Following the revelation that Ms. Golikov made her pleaded purchase on  
7 Walmart.com, Walmart moved to enforce the arbitration agreement and class action  
8 waiver. *See Dkt. 66.* The Court granted Walmart's Motion to Compel Arbitration  
9 on June 10, 2025. The Court found that Ms. Golikov's online purchase—the only  
10 purchase pleaded in the First Amended Complaint—is subject to the arbitration  
11 agreement and class action waiver contained in the Terms of Use, that Ms.  
12 Golikov's allegations were not reasonably interpretable as alleging an in-store  
13 purchase, and Walmart was entitled to rely on Ms. Golikov's Counsel "not  
14 misrepresenting the facts." Order at 1–4. The Order further denied the parties' joint  
15 stipulation to stay class notice (Dkt. 78) as moot and removed all pending dates and  
16 hearings from the calendar. *See id.* at 5.<sup>2</sup>

17 **IV. ARGUMENT**

18 **A. The Court Should Clarify its Order (Rule 60).**

19 First, Walmart requests clarification of the Order under Rule 60(a) as to  
20 whether the order decertified the classes.

21 Rule 60(a) allows the Court to address an "oversight or omission" in a  
22 "judgment, order, or other part of the record." The rule "may be invoked to 'make  
23 a[n order] reflect the actual intentions and necessary implications of the court's  
24 decision,'" and the rule further "permits 'clarification and explanation . . . even in  
25 the absence of ambiguity.'" *Franco v. City of W. Covina*, 2019 WL 8161159, at \*1–

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26 <sup>2</sup> On June 13, 2025, Walmart notified the Ninth Circuit of the arbitration order  
27 in connection with the pending Rule 23(f) petition. Dkt. 12.1 ("If and when the  
28 district court confirms that the class cannot remain certified, Walmart intends to  
voluntarily dismiss its 23(f) petition.").

1 2 (C.D. Cal. Nov. 14, 2019) (citations omitted). Rule 60 permits courts to make  
2 clarifications and corrections “in prior orders; the Ninth Circuit has construed this  
3 rule broadly to allow courts to clarify previous orders ‘to reflect the necessary  
4 implications of the original order, provided that the clarification adheres to ‘the  
5 intent behind the original judgment.’’’ *Yellow Rose Prods., Inc. v. Pandora Media,*  
6 *LLC*, 2023 WL 6932560, at \*2 (C.D. Cal. Sept. 29, 2023) (citation omitted); *see*  
7 *also Tattersalls, Ltd. v. DeHaven*, 745 F.3d 1294, 1297–98 (9th Cir. 2014)  
8 (approving district court use of Rule 60(a) to clarify prior orders); *Revolution*  
9 *Eyewear, Inc. v. Aspex Eyewear, Inc.*, 2007 WL 9706548, at \*2 (C.D. Cal. Nov. 14,  
10 2007) (clarification under Rule 60(a) permissible even where notice of appeal filed  
11 (citation omitted)).

12 The Order implies the classes have been decertified by automatic operation of  
13 law. The Order states Ms. Golikov—the sole named plaintiff and class  
14 representative—agreed to arbitrate and waive her right to bring a class action, and  
15 plainly cannot represent this class (or litigate in court at all). Indeed, the Order also  
16 denied as moot the parties’ joint stipulation to stay class notice, vacated all pending  
17 dates and hearings and removed them from the calendar, and removed the matter  
18 from the Court’s active caseload. *See* Order at 5. Although the Order implies the  
19 class claims have disappeared, it does not explicitly say what is to happen to the  
20 certified classes.

21 The Court should now confirm the prior class are decertified. Absent further  
22 action, it is unclear, for example, what absent class members are meant to do in this  
23 litigation, which is stayed without any deadlines or plan for class notice. It is also  
24 unclear whether the pending Rule 23(f) appeal as to the certified classes is necessary  
25 at all. The certified classes will remain in limbo without a class representative  
26 unless the Court addresses these issues.

27 Walmart therefore respectfully requests that the Court clarify that, through its  
28 Order, the Rule 23(b)(2) and Rule 23(b)(3) classes have been decertified—as a

1 necessary implication of Ms. Golikov being required to individually arbitrate her  
2 claims against Walmart. Doing so will also moot the Rule 23(f) petition.

3 **B. The Classes Should Be Decertified (Rule 23).**

4 If the Court did not intend to decertify the classes through its Order, Walmart  
5 respectfully suggests the Court should do so now. Decertifying the classes falls well  
6 within the Court's authority, and the current posture of the litigation confirms the  
7 classes merit decertification.

8 "A district court may decertify a class at any time," *Rodriguez v. W. Publ'g*  
9 *Corp.*, 563 F.3d 948, 966 (9th Cir. 2009), in the light of subsequent developments in  
10 the litigation, *see Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160 (1982). "In  
11 considering a motion to decertify, 'a court must reevaluate whether the class  
12 continues to meet the requirements of Rule 23,'" including "the four requirements of  
13 Rule 23(a)" ( numerosity, commonality, typicality, and adequacy) and "at least one  
14 of the three different types of classes set forth in Rule 23(b)." *UnifySCC v. Cody*,  
15 2025 WL 1474757, at \*3 (N.D. Cal. May 21, 2025) (citations omitted).

16 ***Ms. Golikov, as "[t]he party seeking to maintain class certification[,] bears the***  
17 ***burden of demonstrating that the Rule 23 requirements are satisfied, even on a***  
18 ***motion to decertify.*** *Lambert v. Nutraceutical Corp.*, 870 F.3d 1170, 1182 (9th  
19 Cir. 2017) (emphasis added) (citing, *inter alia*, *Marlo v. United Postal Serv., Inc.*,  
20 639 F.3d 942, 947 (9th Cir. 2011)), *rev'd on other grounds by Nutraceutical Corp.*  
21 *v. Lambert*, 586 U.S. 188 (2019).

22 Here, the Court's Order compels decertification. The Order establishes that  
23 this case is unsuited to class adjudication because Ms. Golikov and an unknown  
24 number of other class members are bound by arbitration agreements and class action  
25 waivers that forbid their participation in this action. Thus, it is no longer possible  
26 for the certified classes in this case to meet the requirements of Rule 23.

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28

1                   **1. Ms. Golikov Is Atypical and Inadequate.**

2                   As the Court ruled in its Order, Ms. Golikov—the sole named plaintiff and  
3 class representative—must arbitrate her claims against Walmart and has waived her  
4 right to participate in a class action. She also cannot serve as class representative.

5                   “Rule 23(a)(3) requires that ‘the [legal] claims or defenses of the  
6 representative parties [be] typical of the claims or defenses of the class.’” *Tan v.  
7 Grubhub, Inc.*, 2016 WL 4721439, at \*2 (N.D. Cal. July 19, 2016) (modifications in  
8 original). Rule 23(a)(4) imposes a similar requirement “that the class representative  
9 will ‘fairly and adequately protect the interests of the class.’” *Id.* “[T]he typicality  
10 and adequacy inquiries tend to significantly overlap[.]” *Id.* (citation omitted).

11                  Ms. Golikov is subject to arbitration and a class action waiver, making her  
12 incapable of representing any class members that are not. Her claims are, by  
13 definition, atypical of *any* litigation class because they must be arbitrated  
14 individually and cannot be part of a class action. And she is inadequate to represent  
15 those that do not have arbitration agreements.

16                  Case law is legion that a class representative is atypical and inadequate when  
17 he or she is differently situated from class members on issues of arbitrability and  
18 class waivers. *See Avilez*, 596 F. App’x at 579 (vacating class certification that  
19 included class members subject to class action waiver and finding class  
representative not subject to same waiver inadequate and atypical); *Conde v. Open  
Door Mktg., LLC*, 223 F. Supp. 3d 949, 960 (N.D. Cal. 2017) (named plaintiffs  
atypical because not bound by arbitration unlike some of class); *Quinlan v. Macy’s  
Corp. Servs., Inc.*, 2013 WL 11091572, at \*3 (C.D. Cal. Aug. 22, 2013) (no  
typicality where plaintiff asserted claims that class members may have to arbitrate);  
*Macedonia Distrib., Inc. v. S-L Distrib. Co., LLC*, 2020 WL 610702, at \*6 (C.D.  
Cal. Feb. 7, 2020) (collecting cases finding “typicality and adequacy of  
representation lacking where the lead plaintiff is not subject to the same arbitration  
provisions as the putative class.”); *Andrews v. Ring LLC*, 2020 WL 6253319, at \*3–

1 4 (C.D. Cal. Sept. 17, 2020) (denying class certification where plaintiff atypical and  
2 inadequate for not being bound to arbitration unlike bulk of the proposed class)  
3 (Klausner, J.).

4 Indeed, the arbitrability of the claims of the class representatives is sufficient  
5 on its own to decertify the class. In *Estrella*, 2012 WL 214856, at \*5, the district  
6 court agreed with the defendants moving to decertify the class “that [class]  
7 certification is no longer warranted because the class representatives are obligated to  
8 arbitrate their claims.” *Estrella*, 2012 WL 214856, at \*5 (internal citations omitted).  
9 The court observed “the class [wa]s bereft of representatives, and therefore can no  
10 longer meet the requirements of Rule 23,” and thereby granted the motion to  
11 decertify the class. *Id.* Here, Ms. Golikov’s claims have been compelled to  
12 arbitration, and no viable class representative remains.

13 **2. Class Counsel Is Inadequate to Represent the Class.**

14 Class counsel’s conduct in this case demonstrates they will not adequately  
15 protect the class’s interests.

16 Class counsel is adequate where “counsel [does not] have any conflicts of  
17 interest with other class members” and “will . . . prosecute the action vigorously on  
18 behalf of the class[.]” *Tan*, 2016 WL 4271439, at \*2 (citations omitted).  
19 “[A]dequacy of representation ‘depends on the qualifications of counsel for the  
20 representatives, an absence of antagonism, a sharing of interests between  
21 representatives and absentees, and the likelihood that the suit is collusive.’” *Id.*  
22 (citation omitted) “[A] lawyer’s unethical conduct, both before and during the  
23 litigation in question, is relevant to determining whether counsel is adequate under  
24 Rule 23.” *White v. Experian Info. Sols.*, 993 F. Supp. 2d 1154, 1170 (C.D. Cal.  
25 2014) (collecting cases). Even “unethical conduct that does not directly harm the  
26 class or create an immediate conflict can also render counsel inadequate. . .  
27 ‘[m]isconduct by class counsel that creates a serious doubt that counsel will  
28 represent the class loyally requires denial of class certification.’” *Id.* at 1171

1 (citation omitted). A ““serious doubt’ about the adequacy of counsel exists ‘when  
2 the misconduct jeopardizes the court’s ability to reach a just and proper outcome in  
3 the case.”” *Id.* (citation omitted). Inadequacy “often turns on counsel’s integrity  
4 and candor.” *Id.* (collecting cases).

5 Class counsel’s “confusion” from the complaint (if not utter lack of candor)  
6 raises a serious fundamental questions going forward: How can the parties or the  
7 Court trust class counsel to represent *an entire class* adequately if they failed to state  
8 accurately a core allegation *for a single individual*? The procedural idiosyncrasies  
9 giving rise to this Motion are attributable to class counsel’s “misrepresenting the  
10 facts” at the core of this class action (Order at 4):

- 11 • From the start of the case, counsel represented that Ms. Golikov  
12 purchased the avocado oil on November 14, 2021, “from a Walmart  
13 store.” Compl. ¶ 26; FAC ¶ 26.
- 14 • It was not until April 17, 2025—after the classes were certified based  
15 on the allegations of an in-store transaction—that Ms. Golikov’s  
16 attorneys revealed in discovery that the purchase was made from  
17 Walmart.com. *See* Dkt. 66-3 at 2.
- 18 • This obfuscation was not based on facts unknown to class counsel:  
19 class counsel produced in discovery an invoice printed on  
20 September 19, 2024—days before this action was filed on  
21 September 24, 2024—showing the sole pleaded purchase of avocado  
22 oil was made online on Walmart.com. *See* Harper Decl. ¶ 5 & Ex. D.

23 Class counsel attempted to excuse its misstatements, but the Court rejected  
24 Ms. Golikov’s attorneys’ excuses. As stated in the Order, the representation that  
25 Ms. Golikov bought the avocado oil “from a Walmart store” is not reasonably  
26 understood to include an online purchase. Order at 4 (“Plaintiff argues that her  
27 phrasing could and should have been reasonably interpreted to include online  
28 purchases; Defendant’s website is simply an ‘[online] Walmart store.’ But this is

1 unreasonable.”). As the Court further observed, “it would appear reasonable for  
2 Defendant to presume that opposing counsel is not misrepresenting the facts,” *id.*,  
3 but that is exactly what happened here—resulting in costly class-action litigation  
4 that class counsel knew or should have known from the start was barred by an  
5 arbitration agreement. *See Sweet v. Pfizer*, 232 F.R.D. 360, 371 (C.D. Cal. 2005)  
6 (deeming counsel inadequate and discussing *Kingsepp v. Wesleyan Univ.*, 142  
7 F.R.D. 597, 602–603 (S.D.N.Y. 1992) where counsel’s “pleadings ‘obscured the  
8 issues’”); *ESC-Toy Ltd. v. Sony Interactive Ent. LLC*, 2024 WL 1335079, at \*12–13  
9 (N.D. Cal. Mar. 27, 2024) (finding breaches of duty of candor as a basis for  
10 disqualification).

11 Class counsel’s adequacy is further thrown into doubt by the potential  
12 conflicts between counsel’s clients. On the one hand, class counsel owes continuing  
13 duties of loyalty and zealous advocacy to their client Ms. Golikov and to an  
14 unknown number of class members who also agreed to arbitrate. On the other hand,  
15 class counsel owes the same duties to an unknown number of class members who  
16 have *not* agreed to arbitrate (if any). Class counsel must avoid even the “appearance  
17 of divided loyalties” involving the classes, *Rodriguez v. Disner*, 688 F.3d 645, 655  
18 (9th Cir. 2012) (citation omitted), yet the divergent economic incentives class  
19 counsel face between their arbitration-bound client and others create apparent if not  
20 actual substantial conflicts, *e.g.*, *Coneff v. AT&T Corp.*, 673 F.3d 1155, 1159 (9th  
21 Cir. 2012) (acknowledging disincentives to individual arbitration as “the amounts  
22 [of the claims] are too small to be worth the trouble” (citation omitted)); *see also*  
23 *Staton v. Boeing Co.*, 327 F.3d 938, 970–72 & n.22 (9th Cir. 2003) (considering  
24 “class counsel’s interest in fees”); *Del Campo v. Mealing*, 2011 U.S. Dist. LEXIS  
25 158019 (N.D. Cal. Sept. 29, 2011) (disqualifying class counsel on basis of order  
26 finding conflict of interest due to representation of multiple classes in separate  
27 cases).

28

1 Class counsel has not given any indication of seeking to arbitrate on behalf of  
2 Ms. Golikov or anyone else, and class members required to arbitrate may reasonably  
3 question their attorneys' incentives to do so.

4 **3. Numerosity Is Not Satisfied.**

5 The Order also effectively nullifies the basic requirement of numerosity.

6 "A party seeking class certification . . . must be prepared to prove that there  
7 are *in fact* sufficiently numerous parties . . ." *Wal-Mart Stores, Inc. v. Dukes*, 564  
8 U.S. 338, 350 (2011). To date, the only evidence that Ms. Golikov has provided in  
9 support of numerosity is that Walmart has 280 stores in California and sells avocado  
10 oil in stores. *See* Dkt. 51 at 7–8. Even if the Court assumed that was sufficient  
11 before, circumstances have changed: Ms. Golikov has put forward no evidence  
12 whatsoever about how many class members purchased avocado oil from stores, as  
13 opposed to online, or have agreed to the Walmart.com Terms of Use on other  
14 respects, where they may have agreed to arbitrate their disputes and waive  
15 participation in a class action. This defeats numerosity. *See, e.g., Parrish v.*  
16 *Gordon Lane Healthcare, LLC*, 2023 WL 7107267, at \*3, \*6–7 (C.D. Cal. Sept. 26,  
17 2023) (numerosity not established given most class members signed arbitration  
18 agreements); *Lim v. Helio, LLC*, 2012 WL 12884439, at \*2 (C.D. Cal. Apr. 18,  
19 2012) (evidence of arbitration agreements raised issue of proof of numerosity).

20 **4. Commonality and Predominance Are Not Satisfied.**

21 Individualized adjudication will be required for every single class member to  
22 determine who is bound by the Walmart.com Terms of Use. This precludes  
23 commonality and predominance.

24 The commonality and predominance requirements apply to both the Rule  
25 23(b)(2) and Rule 23(b)(3) classes certified in this case. As an initial matter, Rule  
26 23(a)'s commonality requirement applies to both classes and requires "questions of  
27 law or fact common to the class" to certify a class. Fed. R. Civ. P. 23(a)(2).  
28 Likewise, Rule 23(b)(3) requires that "the questions of law or fact common to class

members predominate over any questions affecting only individual members.” The same predominance requirement is a “self-evident” element under Rule 23(b)(2). *Kihn v. Bill Graham Archives LLC*, 2022 WL 18935, at \*3 (9th Cir. Jan. 3, 2022) (reversing class certification where “there [was] an insufficient showing that common questions predominate[d]” for Rule 23(b)(2) class); Fed. R. Civ. P. 23(b)(2) (class action may be maintained if “final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole”).

The central question relevant to commonality and predominance was set forth by the Supreme Court years ago: “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Dukes*, 564 U.S. at 350 (citation omitted). “Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.” *Id.* (citation omitted)

As revealed by the Order, there are substantial “[d]issimilarities within the proposed class,” which would “impede the generation of common answers,” *id.* (citation omitted), i.e., requiring that the Court conduct an individual, case-by-case, class-member-by-class-member analysis. . .

• *Which Class Members Agreed to Arbitrate?* For every putative class member, the Court would have to determine whether the individual agreed to the arbitration agreement in Walmart.com’s Terms of Use. *See* Order at 1–3; *Conde v. Sensa*, 2018 WL 4297056, at \*10–11 (S.D. Cal. Sept. 10, 2018) (no predominance where Court required to determine “which of the class members may be subject to the arbitration provision”). Even as to individuals who purchased the item from an actual physical store, the Terms of Use may still (depending on the individual) govern the relationship between the accountholder and Walmart—including purchases made in a physical Walmart store through the Walmart Pay app (for

1 example, in lieu of cash or credit). *See Krsulic Decl.* ¶¶ 3–5 & Ex A at 13; Ex. B at  
2 13, 39; Ex. C. at 12.

3 • *Do Class Waivers Apply?* Likewise, the Court would need to decide if  
4 each putative class member agreed to and is bound by the class action waiver in the  
5 Terms of Use, an analysis “highly dependent on context.” *Sanchez v. Valencia*  
6 *Holding Co., LLC*, 61 Cal. 4th 899, 911 (2015); *Sensa*, 2018 WL 4297056, at \*11  
7 (denying class certification where Court might have to determine whether  
8 arbitration and waiver clause “binds all, some, or none of the purchasers” (citation  
9 omitted)).

10 • *Who Has Standing?* Class members with valid class waivers may not  
11 have standing to pursue their claims. *See supra* n.1 (citing *Archer*, 2021 WL  
12 4798695, at \*4; *Leuenhagen*, 2021 WL 12311039, at \*2). The individual  
13 determinations necessary to evaluate class member standing further precludes  
14 predominance. *See Van v. LLR, Inc.*, 61 F.4th 1053, 1068–69 (9th Cir. 2023)  
15 (vacating order granting class certification because predominance not satisfied when  
16 class members lacked Article III standing).

17 Compounding all these arbitration-related individualized issues: there is a  
18 delegation clause, which vest the arbitrator with sole authority to make threshold  
19 decisions on disputes of arbitrability. As explained in the Motion to Compel  
20 Arbitration, the Terms of Use include a delegation clause, which requires  
21 individualized arbitration over even threshold disputes relating to the arbitration  
22 agreement—including, e.g., whether the agreement applies to those individuals who  
23 purchased the item both online and at a physical store. *See Brennan v. Opus Bank*,  
24 796 F.3d 1125, 1130 (9th Cir. 2015) (“gateway issues”—over the validity and  
25 enforceability of arbitration provisions—“can be expressly delegated to the  
26 arbitrator where ‘the parties *clearly and unmistakably*’ do so (citation omitted)  
27 (emphasis in original)). The Terms of Use include a provision incorporating arbitral  
28

1 rules. This constitutes a clear and unmistakable delegation clause as a matter of law.  
2 *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 480–81 (9th Cir. 2024).

3 Plaintiffs simply cannot meet their burden to show that any of these  
4 individual issues could be established on a classwide basis through common proof.

5 Courts considering these same issues routinely find a lack of commonality  
6 and/or predominance based on the need to sort out individualized issues relating to  
7 arbitration agreements and class action waivers. *See, e.g., Sensa*, 2018 WL  
8 4297056, at \*10–11 (no predominance because “the Court w[ould] be forced to  
9 determine which of the class members may be subject to the arbitration provision  
10 (*i.e.*, those who purchased online), and those who are not (*i.e.*, all others”)); *Parrish*,  
11 *LLC*, 2024 WL 4875326, at \*1 (court “could not certify a class that included  
12 members who both had and had not waived their class action rights”); *Pablo v.*  
13 *ServiceMaster Glob. Holdings, Inc.*, 2011 WL 3476473, at \*2 (N.D. Cal. Aug. 9,  
14 2011) (“a significant portion of this litigation would be devoted to discovering  
15 which class members signed [arbitration] agreements”); *Castro Valley Union 76,*  
16 *Inc. v. Vapor Sys. Techs., Inc.*, 2012 WL 5199458, at \*8 (N.D. Cal. Oct. 22, 2012)  
17 (no predominance given individual issues about “whether any particular station  
18 owner has already . . . agreed not to participate in any lawsuit—class or  
19 individual”); *Tan*, 2016 WL 4721439, at \*5 (no commonality or predominance).

20 **5. Superiority Is Not Satisfied.**

21 Superiority is also no longer satisfied. A class action must be “superior to  
22 other available methods for fairly and efficiently adjudicating the controversy.”  
23 Fed. R. Civ. P. 23(b)(3); *Dukes*, 564 U.S. at 362–63 (accord for 23(b)(2)). “[W]hen  
24 the complexities of class action treatment outweigh the benefits of considering  
25 common issues in one trial, class action treatment is not the ‘superior’ method of  
26 adjudication.” *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1192 (9th Cir.  
27 2001) (citations omitted). As explained above, this case will require an individual  
28 analysis of every class member to determine which are subject to arbitration

1 agreements and class action waivers. As courts have found, that destroys  
2 superiority—just as much as it precludes predominance. *See Tan*, 2016 WL  
3 4721439, at \*5; *Pablo*, 2011 WL 3476473, at \*2; *Lim*, 2012 WL 12884439, at \*2.

4 **V. CONCLUSION**

5 Walmart respectfully requests that the Court enter an order (1) clarifying that  
6 the Order decertified the classes; or (2) decertifying the classes.

7 DATED: June 30, 2025

DAVIS WRIGHT TREMAINE LLP

9 By: /s/ Jacob M. Harper  
10 Jacob M. Harper

11 *Attorneys for Defendant Walmart Inc.*

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## **CERTIFICATION**

2 The undersigned counsel of record for Walmart Inc. certifies that this brief  
3 contains 5,295 words, which complies with the word limit of L.R. 11-6.1 and the  
4 Court's Standing Order.

/s/ Jacob M. Harper

Jacob M. Harper